

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	File Number EB-02-KC-559
	)	
Cumulus Licensing Corp.	)	NAL/Acct. No. 200232560024
Licensee of FM Broadcast Stations	)	
KQTP, St. Marys, Kansas and	)	FRN 0005-7982-51
KWIC, Topeka, Kansas	)	
Atlanta, Georgia	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released:** August 12, 2002

By the Enforcement Bureau, Kansas City Office:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Cumulus Licensing Corp. (“Cumulus”), licensee of FM radio stations KQTP, St. Marys, Kansas, and KWIC, Topeka, Kansas, apparently liable for a forfeiture in the amount of two thousand dollars (\$2,000) for willful and repeated violation of Section 73.3526(e)(12) of the Commission's Rules (“Rules”).<sup>1</sup> Specifically, we find Cumulus Licensing Corp. apparently liable for failure to maintain required issues-programs listings at both KQTP and KWIC.

**II. BACKGROUND**

2. On July 10, 2002, an agent from the Commission’s Kansas City Field Office inspected FM radio stations KQTP and KWIC at the main studio for both stations located in Topeka, Kansas. At the time of this inspection, the public inspection files for both stations contained no issues-programs listings for the time period since Cumulus consummated purchase of both stations on July 18, 2001. The last issues-programs listing found in the file was dated April 1, 2001.

**III. DISCUSSION**

3. Section 47 C.F.R. 73.3526(e)(12) requires commercial radio stations, every three months, to compile and maintain a list of programs that have provided the station’s most significant treatment of community issues during the preceding three month period. The list for each calendar quarter is to be filed by the tenth day of the succeeding calendar quarter. The list shall include a brief narrative describing what issues were given significant treatment and the programming that provided the treatment. The description of the programs shall include, but shall not be limited to, the time, date, duration, and title of each program in which the issue was treated. At the time of inspection on July 10, 2002, Cumulus

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<sup>1</sup> 47 C.F.R. § 73.3526(e)(12).

did not have any issues-programs listings for either KQTP or KWIC in their respective public inspection files for the time period July 18, 2001, to the date of inspection. The last such list was dated April 1, 2001, which is before Cumulus consummated purchase of both stations on July 18, 2001. As of July 10, 2002, the licensee was missing four quarterly lists for each of the stations.

4. Based on the evidence before us, we find Cumulus willfully<sup>2</sup> and repeatedly<sup>3</sup> violated Section 73.3526(e)(12) of the Rules by failing to maintain required issues-programs listings at both KQTP and KWIC.

5. Pursuant to Section 1.80(b)(4) of the Rules,<sup>4</sup> the base forfeiture amount for failure maintain required records, such as the issues-programs listings, is \$1,000 per violation. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended (“Act”), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>5</sup> In this case, the same violation occurred at two of Cumulus’ radio stations. In addition, Cumulus has a history of prior offenses for the same type of violation at other Cumulus radio stations.<sup>6</sup> Considering the entire record and applying the factors listed above, this case warrants an upwards adjustment of the base forfeiture from \$1,000 to \$2,000.

#### IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,<sup>7</sup> and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>8</sup> Cumulus Licensing Corp. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of two thousand dollars (\$2,000) for willful and repeated violation of Section 73.3526(e)(12) of the Rules by failing to maintain required issues-programs listings at both KQTP and KWIC.

7. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *NAL*, Cumulus Licensing Corp. SHALL PAY the full amount of the proposed

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<sup>2</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act . . . .” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

<sup>3</sup> The term “repeated,” when used with reference to the commission or omission of any act, “means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2).

<sup>4</sup> 47 C.F.R. § 1.80(b)(4).

<sup>5</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>6</sup> Case EB-01-AT-009, Notice of Violation (“NOV”) issued to Cumulus on January 12, 2001. Case EB-01-AT-010, NOV issued to Cumulus on January 12, 2002. Both NOVs cited violation of 47 C.F.R. § 73.3526(e)(12).

<sup>7</sup> 47 U.S.C. § 503(b).

<sup>8</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80.

forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

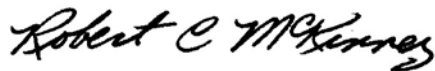
8. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this *NAL* under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>9</sup>

9. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12<sup>th</sup> Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

10. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

11. IT IS FURTHER ORDERED THAT a copy of this *NAL* shall be sent by regular mail and Certified Mail Return Receipt Requested to Cumulus Licensing Corp., 3535 Piedmont Road, Building 14 – 14<sup>th</sup> Floor, Atlanta, GA 30305.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, reading "Robert C. McKinney". The signature is written in a cursive, flowing style.

Robert C. McKinney  
Kansas City Office, Enforcement Bureau

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<sup>9</sup> See 47 C.F.R. § 1.1914.